

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 23, 2009

IN THE MATTER OF K.F.

Appeal from the Juvenile Court for Rutherford County
No. TC 249 Donna Aline Scott, Judge

No. M2008-01742-COA-R3-PT - Filed April 14, 2009

The trial court terminated the parental rights of the father of a sixteen year old girl on multiple grounds, finding that those grounds had been established by clear and convincing evidence and that termination was in the best interest of the child. The father challenges the court's findings on appeal, arguing among other things that the Department of Children's Services did not make reasonable efforts to unify his family. We affirm the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court
Affirmed

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

G. Avery Mott, Nashville, Tennessee, for the appellant, W.P.F.

Robert E. Cooper, Jr., Attorney General and Reporter, Rebekah A. Baker, Assistant Attorney General; for the appellee; Susan H. Hubbard, Guardian Ad Litem, in support of appellee, State of Tennessee, Department of Children's Services.

OPINION

I. A DIFFICULT CHILDHOOD

The minor child at the center of this controversy, K.F., was born on June 14, 1992. A series of unfortunate circumstances caused her to be shuttled among a number of different households during her formative years, so she did not enjoy the security that a stable home situation could have

provided. She lived with Walter F. (“Father”) and her mother until she was three years old, when her mother died. K.F. then began living with Father’s own mother.¹

On July 11, 2002, Father and his mother jointly petitioned the Juvenile Court of Rutherford County to grant permanent custody of K.F. to Father’s mother. The petition alleged that Father was disabled, that he had recently been released from jail, that he had no job, and that it was in K.F.’s best interest that his mother be awarded custody.² The court granted the petition. Father’s mother died in February of 2003, and Father’s father died shortly thereafter.

With Father’s agreement, the court awarded temporary custody of K.F. to Mr. and Mrs. M., the brother-in-law and sister of K.F.’s late mother. The custody order directed that the child’s Social Security checks go to her new custodians, and that Father be granted visitation with her every other weekend. Father apparently exercised his visitation only a few times. He testified that Mr. and Mrs. M. decided that he was irresponsible and refused to allow him any further visitation with K.F. after one Friday when he forgot to pick the child up for a scheduled visit. Father had very little subsequent contact with K.F. Although he could have petitioned the court to enforce his visitation rights or to regain custody of the child, he did neither.

In February of 2006, Mr. and Mrs. M. decided they could no longer care for K.F. because of her behavior. They accordingly used a power of attorney to assign custody of the child to other relatives, Mr. J. and his wife. On May 1, 2006, Mr. J. contacted the Department of Children’s Services (“DCS” or “The Department”) and reported that he and his wife were no longer able to handle K.F. because she had become violent, and that she had pushed Mrs. J. down, swung at Mr. J., and kicked her cousin.

DCS contacted Mr. and Mrs. M. and other relatives of K.F. to determine if any them were able to assume custody of the child. The Department offered to provide any necessary services to help K.F. remain in the home of family members. Several relatives stated that they would like to have regular visitation with K.F., but none were willing to assume custody of her or to accept the offered services. One relative stated that the child should never be placed in Father’s care because he was a registered sex offender.

The Department filed an emergency petition for custody of K.F. and a petition for adjudication of dependency and neglect, accompanied by an affidavit of reasonable efforts. Both petitions alleged that the child’s caregivers had abandoned her. DCS was unsuccessful in its attempts to serve the petition on Father. The court accordingly continued the matter so he could be served by publication. On August 15, 2006, the court entered an order granting the petition. Father was not present at the hearing, but he was represented by appointed counsel.

¹The Department of Children’s Services states in its brief that K.F.’s mother died in 2002. However, the death certificate in the record shows that she died on October 13, 1995.

²The proof showed that Walter F. pled guilty to one charge of sexual battery in 2001 and was sentenced to two years in prison. He was apparently incarcerated for five months before his sentence was suspended.

K.F. was placed in a foster home, and the Department drafted the first of a series of permanency plans that stated alternate goals of “exit with relatives” and “adoption.” The court ratified every plan as written. Father did not participate in the creation or adoption of the first plan because the Department could not locate him, but he was again represented by counsel. DCS case worker Jennifer Kindle testified that all the mail they sent to Father’s address was returned by the post office with the notation “No one here by that name” or “wrong address.” A second permanency plan was also adopted without Father’s participation. While the two plans allocated various responsibilities for establishing permanency to the Department, to K.F., and to her foster family, no responsibilities were assigned to Father because he could not be located. At some point, an order prohibiting contact between Father and K.F. was entered, because of Father’s status as a registered sex offender.

The Department finally discovered that Father was incarcerated. On June 10, 2007 it convened a Child and Family Team Meeting in jail so a third permanency plan could be presented to him. Since Father had been located, the plan included the revised goals of “reunify with parent(s)” and adoption. The plan listed four desired outcomes for Father to work towards: that he would have the mental health and mental stability to care for K.F.; that he would have the coping skills to remain alcohol and drug free; that he would be law-abiding; and that he would have the resources and skills to parent K.F. effectively. Attached to each of these outcomes was a list of various tasks that Father needed to perform in order to achieve them. Father declined to sign the plan until he could speak to his attorney.

II. TERMINATION PROCEEDINGS

On March 7, 2008, DCS filed a petition to terminate Father’s parental rights. The petition set out three grounds for termination: abandonment by failure to visit, abandonment by failure to support, and persistence of conditions. Shortly thereafter, the court appointed counsel to represent Father in the termination proceedings and a guardian ad litem to protect the interests of K.F. The Department’s petition was later amended by oral motion to add failure to comply with the permanency plan as an additional ground for termination of parental rights.

The petition was heard on July 30, 2008. Father was present, and he testified at length.³ Three DCS social workers who had been assigned in succession to the case testified as well. Father’s testimony revealed long-standing social and psychological problems that predated the death of his wife. He had a long history of confinement in mental hospitals for depression and alcoholism, which started after a 1981 automobile accident. His depression became worse after his wife died. Father testified that he has been on anti-depressant medications since 1995, and that he also takes shots of Rivotril “to help me deal with alcohol and all kinds of schizophrenia and things and

³The record contains an order to transport Father from the Rutherford County Adult Detention Center to the courthouse so he could be available for the hearing, which at the time was scheduled for June 3, 2008. The hearing was later continued to July 30. It is unclear whether Father was still incarcerated on July 30.

cravings.” Father has been arrested for a number of criminal violations, which he blames on his depression and on his chronic problems with alcohol.

Father’s record includes convictions for sexual battery, aggravated assault, resisting arrest, violation of probation and failure to comply with the sex offender registration laws. He testified that he pled guilty to sexual battery in 2001 on the advice of his lawyer, but that “I don’t recall doing anything to that woman.” He likewise pled guilty to an aggravated assault in 2005 on his lawyer’s advice. He testified that he thought he should have fought the charge, although “I’m not good at this law stuff.” He denied the truth of a more recent allegation that he had violated his probation by attacking a friend with a meat cleaver. Father lost his drivers license because of a D.U.I. conviction four years prior to the termination hearing, but he never took any steps to get it reinstated.

Father’s attorney questioned him about his financial situation and about the living conditions he could provide for K.F. if he were ever reunited with her. According to his testimony, he receives a regular disability check, which together with K.F.’s social security check would enable him to cover both their needs. There is also some inheritance money that he can draw upon if necessary. He testified that he lives in a house in Murfreesboro which is titled in the name of his brother, but which also belongs to him as part of an inheritance from his parents. Father was questioned about an earlier statement he made that people come in and out of his house all of the time to party. Father stated that was “my nephew and his gang from the college,” but that he wasn’t present when it happened, and that “when I caught them partying over there I had to run them off.” Father also stated that he had stopped drinking, but the record includes a probation violation report which stated that officers had found alcohol and illegal weapons in his house on May 2, 2008, less than three months prior to the termination hearing.

Father testified that he remained willing to serve as K.F.’s father, and that although he had not seen her in five years, “we always got along good,” and, “her being 16, I could take care of her now.” However, his testimony also indicated that K.F. was not receptive to Father taking such a role in her life. He testified that K.F. paid a visit to him while he was in jail, but that “it wasn’t a good visit.” K.F. told Father that she forgives him and has no hard feelings towards him, but also that “she said she didn’t want to have nothing to do with me no more.” Kristin Gary, who was the DCS team leader at the time K.F. came into DCS custody, testified that one family member told her that Father had physically and sexually abused K.F. The Department followed up on that allegation by having K.F. interviewed at the Child Advocacy Center. K.F. denied that she had been abused and didn’t want to talk about it, so the Department closed the investigation.

Jennifer Kindle became K.F.’s case worker when she first came into DCS custody and remained on the case for the next 16 months. She testified that “from the very get-go she expressed no desire to have anything to do with her father, to see her father, to talk to her father.” Ms. Kindle was aware of the abuse allegations, but declined to speculate whether there was any connection between K.F.’s attitude towards her father and those allegations. She also testified that K.F. had developed a good bond with her current foster parents, and that she has made progress towards being

a typical teenager. She concluded that it was in K.F.'s best interest for Father's parental rights to be terminated.

Arenetra Watford took over as K.F.'s caseworker on September 4, 2007. She testified that Father did not contact her during the first five months after she was assigned to the case, but that after the termination petition was filed, he came to a family team meeting. According to her testimony, Father seemed calm and cooperative at first, but he became upset and combative when he started talking about the termination petition and he had to be escorted out of the building. Ms. Watford also testified as to her recent observations of K.F.'s life with her foster family. She said that the teenager's personality "... just glowed; she was happy about her school and all her activities; and just the affection between her and her foster mother was genuine; she enjoyed where she was; she liked her [foster] family and she felt comfortable where she was." Like Ms. Kindle, Ms. Watford testified that in her opinion termination of Father's parental rights was in K.F.'s best interest.

At the conclusion of proof, the parties presented their closing arguments. Father's attorney did not attempt to minimize the magnitude of the problems revealed by his client's testimony, but he argued that the Department did not meet its burden of making the "reasonable efforts" to help Father make the adjustments in his life that might have made it possible for him to become reunited with his daughter. *See* Tenn. Code Ann. § 37-1-166(g).

The Department's attorney responded that reasonable efforts are a two-way street, and that Father had not availed himself of any of the services offered by the Department. The guardian ad litem agreed with the Department that its efforts were reasonable and that Father had not cooperated. She noted that the Department made every effort to keep in touch with Father by mail, using the only address it had for him, but that he had himself had never taken any steps to keep them informed as to his whereabouts. Father had been given phone numbers and addresses for contacting K.F.'s case workers, but he never made use of them.

The trial court announced its decision from the bench. The court declared that DCS had met its burden of proving every ground of termination alleged in the amended petition by clear and convincing evidence. The court also found clear and convincing evidence that termination of Father's parental rights was in K.F.'s best interest. The order of termination, entered on August 8, 2008, memorialized the court's decision. This appeal followed.

III. THE STANDARD OF REVIEW

A parent has a fundamental right to the care, custody and control of his or her child. *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212-13 (1972); *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 174-75 (Tenn. 1996); *In Re Adoption of a Female Child*, 896 S.W.2d 546, 547-48 (Tenn. 1995); *Nale v. Robertson*, 871 S.W.2d 674, 678 (Tenn. 1994). This right is a fundamental but not absolute right, and the state may interfere with parental rights if there is a compelling state interest in doing so. *Santosky v. Kramer*, 455 U.S. 745, 747, 102 S. Ct. 1388, 1391 (1982); *Nash-Putnam*, 921 S.W.2d at 174-75.

Terminating parental rights has the legal effect of reducing the parent to the role of a complete stranger, and of

severing forever all legal rights and obligations of the parent or guardian of the child against whom the order of termination is entered and of the child who is the subject of the petition to that parent or guardian. The parent or guardian shall have no further right to notice of proceedings for the adoption of that child by other persons and shall have no right to object to the child's adoption or thereafter to have any relationship, legal or otherwise, with the child. . . .

Tenn. Code Ann. § 36-1-113(l)(1).

The United States Supreme Court has recognized the unique nature of proceedings to terminate parental rights, stating that “[f]ew consequences of judicial action are so grave as the severance of natural family ties.” *M. L. B. v. S. L. J.*, 519 U.S. 102, 119, 117 S. Ct. 555, 565 (1996) (quoting *Santosky*, 455 U.S. at 787, 102 S. Ct. at 1412 (Rehnquist, J., dissenting)). As a result, “[t]he interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment.” *Id.*, (quoting *Santosky*, 455 U.S., at 774, 102 S.Ct. at 1405 (Rehnquist, J., dissenting)).

Our legislature has identified those situations in which the state's interest in the welfare of a child justifies interference with a parent's constitutional rights by setting forth grounds on which termination proceedings can be brought. Tenn. Code Ann. § 36-1-113(g). The statutes on termination of parental rights provide the only authority for a court to terminate a parent's rights. *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn. 2004). Thus, parental rights may be terminated only where a statutorily defined ground exists. Tenn. Code Ann. § 36-1-113(c)(1); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

To support the termination of parental rights, only one ground need be proved, so long as it is proved by clear and convincing evidence. *In the Matter of D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003); *State Dep't of Children's Services v. A.M.H.*, 198 S.W.3d 757, 764 (Tenn. Ct. App. 2006). In addition, it must also be shown by the clear and convincing evidence that termination of parental rights is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c)(2); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

IV. GROUNDS

A. ABANDONMENT

Our legislature has furnished us with a very specific statutory definition of abandonment which we are obligated to follow in termination cases. Tenn. Code Ann. § 36-1-102(1)(A)(i) states that abandonment occurs when a parent who is the subject of a petition for termination of parental rights has either willfully failed to visit or willfully failed to make reasonable payments toward the

support of the child who is the subject of the petition for a period of four consecutive months immediately preceding the filing of the termination petition. In this case, it is undisputed that Father failed to visit K.F. and failed to pay support for her for a period of over five years, which included the relevant four months.

Father argues however, that he did not abandon K.F. because his failures were not willful. As our Supreme Court stated in *In re Swanson*, 2 S.W.3d 180, 186 (Tenn. 1999) the statutory language “willfully failed to visit” and “willfully failed to support” establishes a constitutionally necessary element of intent which must be found to exist for any valid determination of abandonment.

Father testified that DCS and his lawyer told him that he wasn’t allowed to visit K.F. during the relevant period. He argues on appeal that as a registered sex offender, it would have been illegal for him to visit with his daughter, and thus that his failure to visit can not be considered willful. During the testimony of Jennifer Kindle, the trial court denied that such visits are illegal,⁴ but it acknowledged that it had issued a no-contact order preventing Father from visiting with K.F.

The court also asserted that it had told Father’s court-appointed attorney that if Father wished, he could file a motion for visitation and present proof, and that the court would consider restoring his visitation if he did so. But no such motion was filed. The Department argues that Father’s failure to file a motion for visitation rendered his failure to visit willful. It is not necessary that we rule on that question, since this case presents other grounds for termination. As for the failure to support, the Department has chosen on appeal not to pursue the ground of abandonment by reason of failure to pay child support, so further discussion of that issue is also unnecessary.

B. THE PERMANENCY PLAN

Tennessee law requires DCS to prepare a permanency plan for each child in foster care under its supervision. Such a plan should include a placement goal for the child and a specific statement of responsibilities “between the parents, the agency and the case worker of such agency.” Tenn. Code Ann. § 37-2-403(a). The plan requirements should be “reasonable and related to remedying the conditions which necessitate foster care placement.” *In re Valentine*, 79 S.W.3d 539, 547 (Tenn. 2002).

The third and only relevant permanency plan in this case contained an extensive statement of responsibilities for Father, reflecting the major improvements needed for him to become capable of acting as a parent to K.F. Among other things, the plan required Father to take full psychological

⁴Tenn. Code Ann. § 40-39-211 forbids a sex offender whose victim was a minor from knowingly residing with a minor, although there is an exception if the offender is the parent of the minor, unless the parent is in the process of having his parental rights terminated or the minor was the victim offender. It appears that Father’s offense was against an adult woman and thus that the statute does not apply to him.

and psychosexual examinations as well as an alcohol and drug assessment and to follow all the resulting recommendations; to submit to random drug screens; to take his prescribed medications; to go to individual counseling; to take a parenting assessment; to resolve his current criminal charges; and not to incur any new criminal charges. Father was also required to stay in contact with DCS; to demonstrate that he had obtained safe and stable housing; to show DCS that he had a stable income and a budget plan; and to provide DCS with a transportation plan for K.F.

The proof showed that after the permanency plan was adopted, Father completed the alcohol and drug assessment and attended a few AA meetings. He did not communicate with DCS about his housing, his income, his budget or his transportation. In fact, he did not try to communicate with DCS at all. There was no proof that he submitted to random drug screens or that he took a parenting assessment. He failed to avoid new criminal charges. He allegedly threatened a friend with a meat cleaver in April of 2008. The following month, he violated the terms of his probation when two officers doing a home visit found alcohol and illegal weapons in his house and smelled alcohol on his breath.

Although the purpose of a permanency plan is to assist the parties in achieving the goals that are necessary for family stability, a parent's failure to comply with the requirements of the plan can constitute a ground for termination of parental rights. Tenn. Code Ann. § 36-1-113(g)(2). Under the statute, noncompliance must be "substantial" in order to justify the termination of parental rights. *In re J.C.D.*, 254 S.W.3d 442, 447 (Tenn. Ct. App. 2007). Trivial, minor or merely technical noncompliance with the permanency plan is not sufficient by itself to justify the termination of parental rights. *In re Valentine*, 79 S.W.3d at 548; *In re M.J.B.*, 140 S.W.3d 643, 656-57 (Tenn. Ct. App. 2004).

The proof in this case shows that the tasks allocated to Father in the plan were reasonable and were directed towards helping him achieve competence as a parent. Completion of those tasks, or at least serious progress towards completion, were essential steps for remedying the conditions which made it necessary for K.F. to be placed in foster care. Father's testimony showed that he failed to even make an effort to perform almost every one of the tasks that the plan required of him. He made no discernable progress towards the goals of the plan, and thus the evidence was clear and convincing that he failed to substantially comply with its requirements.

C. PERSISTENCE OF CONDITIONS

Probably the most compelling ground for termination in this case is the one which is usually called persistence of conditions. Under Tennessee law, a court may terminate parental rights when,

(3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or

neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

Tenn. Code Ann. § 36-1-113(g)(3)

As the statute indicates, those conditions the persistence of which can be a ground for termination of parental rights may either be those which led to the child's removal from the home or any other conditions which would likely cause the child to be subjected to further abuse or neglect and which therefore would prevent the child's safe return to the care of the parent.

When the juvenile court terminated Father's parental rights, it had been more than two years since K.F. was placed in DCS custody. She was removed from the home of her mother's relatives because no one, including Father, was willing and able to provide a stable home for her. Father now contends that he is ready to welcome her into the inherited house where he currently lives, a house which is titled in the name of his brother. However, while the existence of a residence of some kind is necessary if a child is to have a stable home, it is not sufficient in and of itself.

Father's own testimony shows that he has suffered, and continues to suffer, from chronic problems of depression, anger and alcohol abuse, which have led to two convictions for violent offenses. It goes without saying that the behavior associated with such problems is not compatible with a safe and healthy home, and is not conducive to the health and well-being of an impressionable and vulnerable young person. Although DCS has offered to help Father in a number of ways to deal with his problems, he has not chosen to take advantage of the opportunity. Thus, there is nothing in the record to suggest that his long-standing problems can be remedied at any time in the near future.

Father was convicted of sexual battery and aggravated assault, and after being freed from confinement for those crimes, he was unable to comply with the conditions of his probation, thereby finding himself incarcerated again and again. Even if we could ignore the risk of placing a teenage girl in the home of a registered sex offender, we would still have to consider the very real possibility of Father returning to jail and K.F. being left with no adult supervision whatsoever. Thus, it would be unsafe for K.F. to be returned to Father's care, and there is a reasonable probability that if she were, she would be subjected to further abuse or neglect.

The proof showed that K.F. is happy with her current home placement and does not wish to revive her relationship with Father. As his own testimony indicated, she had not seen him for five years, other than to visit him in jail one time. The purpose of that visit was to tell him that she forgives him but that she does not want to see him any more. K.F. has no meaningful relationship

with her Father at this time, and any attempts to force her into such a relationship will greatly diminish her chances of early integration into a safe, stable and permanent home. We accordingly agree with the trial court that there is clear and convincing evidence that termination of Father's parental rights can be justified on the ground of persistence of conditions.

D. THE QUESTION OF REASONABLE EFFORTS

The statutes governing commitment of children to the custody of the Department of Children's Services and those governing the termination of parental rights obligate the Department to make "reasonable efforts" to reunite a child with his or her parent or guardian before taking custody of the child or attempting to terminate the parent's rights. Tenn. Code Ann. § 37-1-166(b). The statute defines reasonable efforts as "the exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family." Tenn. Code Ann. § 37-1-166(g). At the same time, "...parents desiring the return of children must also make reasonable and appropriate efforts to rehabilitate themselves and to remedy the conditions that required the Department to remove the children from their custody." *In re Giorgianna H.*, 205 S.W.3d 508, 519 (Tenn. Ct. App. 2006).

Father contends on appeal that the Department's efforts were "far from reasonable." He argues that DCS made little more than token efforts to find him and get him to Child and Family Team meetings, and that when they did locate him their efforts to reunify him with K.F. were "anemic at best." The testimony of the DCS case workers and the quarterly progress reports in the record show that aside from placing K.F. in a foster home, the Department furnished her with medical, dental and vision care, provided her with counseling, monitored her progress in her foster home and in school, and made sure she enrolled in appropriate programs.

Whether the Department's efforts are reasonable in any particular case depends on the circumstances of that case. Father's frequent incarcerations and his failure to keep the Department informed as to his whereabouts prevented the Department from extending help to him until the third parenting plan was adopted. During Father's meeting in jail with the Child and Family Team, that plan was explained to him in detail, including the lists of tasks he was required to perform in order to achieve the plan's goals. At the bottom of several of those lists was the notation, "DCS will request flex funds for services as needed," thus indicating the Department's willingness to procure the resources necessary to help Father with his goals. Father was also provided with a written explanation of the grounds and procedures for termination of parental rights, which he signed, and which should have alerted him to the consequences of failing to take appropriate action.

Father testified that except for periods of incarceration, he has lived in the same house since K.F. came into DCS custody. The Department mailed frequent notices of meetings to Father, but those notices were either ignored or returned undelivered. Father had in his possession the address and phone numbers he needed to contact K.F.'s caseworkers, but he did not make any use of them. Arenetra Watford, who took over as K.F.'s caseworker after the adoption of the third permanency

plan, testified that he did not contact her for five months, and that she first heard from him after the petition for termination was filed.

As this court has said “Reunification of a family is a two-way street, and neither law nor policy requires the Department to accomplish reunification on its own without the assistance of the parents.” *In re Tiffany B.*, 228 S.W.3d 148, 159 (Tenn. Ct. App. 2007). However, it is well-established that the Department must do more than simply provide the parents with a list of service providers and then leave the parents to obtain services on their own. Nonetheless, the Department's efforts to assist parents need not be “herculean.” *In re Giorgianna H.*, 205 S.W.3d. at 519; *In re C.M.M.*, 2004 WL 438326, at *7.

In the present case, the Department gave Father detailed information as to the goals he needed to achieve in order to avoid termination of his parental rights. The Department also indicated that it was willing and able to help Father with those goals, and was prepared to seek funding for the services Father needed to achieve them. But in order to receive those services, Father would have had to make some “reasonable and appropriate efforts,” such as contacting the Department and/or requesting assistance. After thoroughly studying the record, we conclude that the efforts the Department made to reunite Father and K.F. were reasonable under the circumstances, but that Father's own efforts fell far short of what was necessary.

V. BEST INTEREST

Once a ground for termination is proven by clear and convincing evidence, the next inquiry for the trial court is whether termination of a parent's rights is in the best interest of the child, which also must be proven by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c)(2). Another section of that statute sets out a list of non-exclusive factors for the court to consider in making its determination of best interest:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(I)

Every factor need not be applicable in order for the trial court to determine that it is in the best interest of the child for a parent's right to be terminated. The relevance and weight to be given each factor depends on the unique facts of each case. In some cases one factor alone may be sufficient to determine the outcome. *In Re Audrey S.*, 182 S.W.3d 838, 878 (Tenn. Ct. App. 2005). In this case, however, nearly all the enumerated factors apply.

The record clearly shows that Father has not made the adjustments that would make it safe for K.F. to reside in his home. Father's lack of progress also indicates that such adjustments are unlikely to occur in the near future. Father has not maintained visitation with K.F. for at least five years, and thus he has not established a meaningful relationship with her. Although the allegations that Father abused K.F. have not been proven, his persistent problems with alcohol and depression are likely to create risks for her, as well as to produce a domestic atmosphere which would be detrimental to her well-being. His frequent difficulties with the law create an additional level of uncertainty about the stability of his household.

K.F. is in a stable foster home and is apparently quite happy there. At this point, a change of caretakers would likely have a devastating emotional and psychological effect on her. She herself has stated, both directly to Father and to the DCS caseworker, that she does not wish to have anything more to do with Father. Thus, the evidence is overwhelming that termination of Father's parental rights is in K.F.'s best interest.

VI.

The order of the trial court is affirmed. We remand this case to the Juvenile Court of Rutherford County for any further proceedings necessary. Tax the costs on appeal to the appellant.

PATRICIA J. COTTRELL, P.J., M.S.